

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>JAMES SAMUEL BINGHAM Plaintiff, vs. UTAH STATE DEPARTMENT OF WORKFORCE SERVICES, et al. Defendants.</p>	<p>ORDER and MEMORANDUM DECISION Case No. 2:08-CV-238 CW</p>
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In this action, Plaintiff James Samuel Bingham has brought claims under 42 U.S.C. § 1983 against Defendants the Utah Department of Workforce Service (“DWS”), the DWS Payment Error Prevention Unit (“DWS Unit”) and Chau Nguyen, a DWS employee. This case was referred to United States Magistrate Paul M. Warner under 28 U.S.C. § 636(b)(1)(B).

Because Mr. Bingham is proceeding *in forma pauperis*, this action is governed in part by 28 U.S.C. ¶ 1915. On July 6, 2009, the Magistrate Judge issued a Report and Recommendation, recommending that Mr. Bingham’s complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. This recommendation was based on the Magistrate Judge’s conclusion that DWS and the DWS Unit are entitled to Eleventh Amendment immunity and because none of the Defendants are “persons” within the meaning of 42 U.S.C. § 1983.¹

¹ To the extent Mr. Bingham seeks money damages against DWS and the DWS Unit, it appears that it would also be appropriate to dismiss his claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii), which directs the court to dismiss a case if it “seeks monetary relief against a defendant who is immune from such relief.”

After reviewing the file *de novo*, the court hereby APPROVES AND ADOPTS the Magistrate Judge's Report and Recommendation in its entirety. Accordingly, this action is DISMISSED.

SO ORDERED this 27th day of July, 2009.

BY THE COURT:



Clark Waddoups
United States District Judge